

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X **Docket#**  
UNITED STATES OF AMERICA, : 16-CV-7057 (KAM) (JO)  
Plaintiff, :  
 :  
- versus - : U.S. Courthouse  
 : Brooklyn, New York  
 :  
BARCLAYS CAPITAL, INC., :  
et al., : June 8, 2017  
Defendants, :  
-----X

TRANSCRIPT OF CIVIL CAUSE FOR INITIAL CONFERENCE  
BEFORE THE HONORABLE JAMES ORENSTEIN  
UNITED STATES MAGISTRATE JUDGE

**A P P E A R A N C E S:**

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1 THE CLERK: Civil Cause for Initial Conference,  
2 United States of America v. Barclay's Capital, Inc, et  
3 al., docket 16-cv-7057.

4 Would you like the appearances or the sign-in  
5 sheet is good?

6 THE COURT: You know what? Let me just put  
7 names to faces, if you could just -- I know some of you  
8 but not all of you. Just go around the tables and  
9 introduce yourselves.

10 MR. AMANAT: Good morning, your Honor.

11 Franklin Amanat from the United States  
12 Attorney's Office on behalf of the United States.

13 THE COURT: Good morning.

14 MS. BROOKER: Good morning, your Honor.

15 Kate Brooker on behalf of the United States,  
16 United States Attorney's Office.

17 THE COURT: Good morning.

18 MR. BELZ: Good morning, your Honor.

19 Matthew Belz on behalf of the government, also  
20 from the United States Attorney's Office.

21 THE COURT: Good morning.

22 MS. VELLA: Josephine Vella, United States  
23 Attorney's Office.

24 THE COURT: Good morning.

25 MR. LESTELLE: Good morning, your Honor.

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1 Evan Lestelle from the United States Attorney's  
2 Office on behalf of the United States.

3 THE COURT: Good morning.

4 MR. KLAPPER: Good morning, your Honor.

5 Richard Klapper, Sullivan & Cromwell for the  
6 Barclays defendants. That would be all of the defendants  
7 other than Mr. Carroll and Mr. Menefee.

8 THE COURT: Good morning.

9 MR. ZINN: Good morning, your Honor.

10 David Zinn, Williams and Connolly also for  
11 Barclays.

12 THE COURT: Good morning.

13 MR. SMALLWOOD: Jesse Smallwood, Williams and  
14 Connolly.

15 THE COURT: Good morning.

16 MS. JAMES: Good morning, your Honor.

17 Dani James from Kramer Levin on behalf of Mr.  
18 Menefee.

19 THE COURT: Good morning.

20 MR. MCGORTY: Good morning, your Honor.

21 Glen McGorty of Crowell & Mooring on behalf of  
22 John Carroll.

23 THE COURT: I'm sorry, I was looking -- Mr.?

24 MR. MCGORTY: McGorty, Glen McGorty of Crowell  
25 & Mooring on behalf of John Carroll.

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1 THE COURT: Ah, yes, here you are. Good  
2 morning.

3 MR. MCGORTY: Good morning.

4 MS. SIDDIKY: Good morning.

5 Leila Siddiky on behalf of Barclays from  
6 Sullivan & Cromwell.

7 THE COURT: Good morning.

8 MR. SCOTT: Good morning, your Honor.

9 Jeff Scott from Sullivan & Cromwell on behalf  
10 of the Barclays defendants.

11 THE COURT: Good morning. Okay. Let me just  
12 look at my notes here.

13 Ms. Siddiky, I don't think I -- I don't have  
14 you in my notes. Have you entered a notice of  
15 appearance?

16 MS. SIDDIKY: No, I have not, your Honor.

17 THE COURT: Okay. Would you do so please and  
18 just give me the spelling of your name?

19 MS. SIDDIKY: S as in Sam.

20 THE COURT: Uh-hum.

21 MS. SIDDIKY: I-D as in dog, D as in dog, I-K-Y.

22 THE COURT: I-K-Y. And your first name?

23 MS. SIDDIKY: Leila, L-E-I-L-A.

24 THE COURT: Thank you. All right, folks.  
25 So let's get up to speed. I've got your

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1 proposed discovery plan. What I am hoping to do today,  
2 not do a deep dive into the case but just have you guys  
3 who are, of course, much more familiar with it than I,  
4 give me a sense of where you think the primary factual  
5 disputes are, so that I can have a sense of what's likely  
6 to come up in discovery and any discovery issues that  
7 you've identified as something I may have to rule on and  
8 then we're going to get to a discussion of the schedule.

9 So Mr. Amanat, are you going to speak for the  
10 government or whoever wants to speak?

11 MR. AMANAT: Do you prefer that we speak from  
12 the podium or --

13 THE COURT: I prefer always that you maintain  
14 your comfort.

15 MR. AMANAT: Okay, great. Thank you. Yes,  
16 good morning.

17 The United States brought this suit at the end  
18 of December of 2016.

19 THE COURT: I'll just note we're joined by Ms.  
20 Seymour. Welcome.

21 MS. SEYMOUR: Apologies for being late, your  
22 Honor.

23 THE COURT: Okay. Go ahead, Mr. Amanat.

24 MR. AMANAT: We filed our complaint on December  
25 22nd, 2016 under the Financial Institutions Reform,

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1 Recovery and Enforcement Act or FIRREA, seeking civil  
2 penalties from Barclays and two of its former executives  
3 on the basis of a number of predicate offenses including  
4 mail fraud, wire fraud, bank fraud in violations of 18  
5 USC 1005 and 1014.

6 THE COURT: Forgive me for interrupting. I'll  
7 try not to do it too often but the mention of the  
8 criminal statutes reminds me, I intended to ask whether  
9 the government has provided notice to all victims of the  
10 alleged offenses about today's proceeding?

11 MR. AMANAT: We have not, your Honor. This is  
12 a --

13 THE COURT: Please do so.

14 MR. AMANAT: Yeah, FIRREA is a hybrid statute  
15 that provides for civil penalties --

16 THE COURT: I'm not talking about FIRREA --

17 MR. AMANAT: Right.

18 THE COURT: -- Mr. Amanat. As the government  
19 well knows --

20 MR. AMANAT: Right.

21 THE COURT: -- 18 USC 3771 requires notice to  
22 every victim of a federal crime of any public court  
23 proceeding involving that crime. The complaint here  
24 alleges the commission of several federal crimes. I'm  
25 sure you've identified all of the victims. Going

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1 forward, please provide advance notice to every  
2 identified victim of the proceedings that they can be  
3 present and be heard if they think that's appropriate for  
4 them to do so.

5 MR. AMANAT: We will do so, your Honor.

6 THE COURT: Okay.

7 MR. AMANAT: So we, as I said, brought suit in  
8 December. The complaint lays out in some detail the  
9 evidence that the government developed against the  
10 defendants over the course of the investigation that  
11 preceded this action.

12 We have since the filing of this suit,  
13 commenced discovery, both to the defendants and from the  
14 defendants.

15 THE COURT: I take it that's on consent,  
16 everybody. You know, to the extent that folks, you've  
17 exchanged discovery demands prior to the 16(f)  
18 conference, I take it that's on consent?

19 MR. AMANAT: Yes.

20 MR. KLAPPER: Yes, your Honor.

21 UNIDENTIFIED SPEAKER: Yes, your Honor.

22 THE COURT: All right. Go ahead.

23 MR. AMANAT: Both sides have exchanged  
24 automatic disclosures and propounded discovery requests  
25 on the other side, which the answers to which are



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1 pending. The -- our suit is predicated on 36 deals  
2 referred to in the complaint as the subject deals, that  
3 Barclays secured ties between December of 2005 and August  
4 of 2007, these were residential mortgage-backed  
5 securitizations, that were backed by mortgages amount to  
6 31 billion dollars worth of assets backed these  
7 securities.

8 And it is the government's contention as  
9 alleged in some detail in the complaint, that the  
10 securitization of all 36 of these deals was the produce  
11 of a fraudulent scheme, conducted by Barclays and for  
12 seven of the deals as well, the two individual  
13 defendants, Paul Menefee and John Carroll.

14 THE COURT: And they were CFO and chief  
15 accounting officer?

16 MR. AMANAT: No, no. Paul Menefee was a banker  
17 at Barclays who was the individual principally  
18 responsible for overseeing the subprime principal  
19 securitizations. John Carroll was a trader at Barclays  
20 who was primarily -- who was the individual primarily  
21 responsible for the acquisition of the pools of subprime  
22 whole loans that ended up being securitized in all of the  
23 deals that, whose names begin with SABR, S-A-B-R.

24 THE COURT: But wasn't one of them an officer  
25 of SABR or both of them?

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1 MR. AMANAT: They were officers of SABR, yes.

2 They --

3 THE COURT: That's what I --

4 MR. AMANAT: I apologize. I thought you had  
5 asked if they were the CFO of Barclays.

6 THE COURT: No, no, okay, of SABR.

7 MR. AMANAT: Yes. So the SABR entity --

8 THE COURT: Sorry to interrupt, but counsel who  
9 just entered, could you identify yourself?

10 MR. LEVINE: Jared Levine with Crowell & Moring  
11 for defendant John Carroll.

12 THE COURT: Good morning, welcome.

13 MR. LEVINE: Good morning.

14 MR. AMANAT: Yes, so the SABR entities,  
15 Securitized Asset Backed Receivables, LLC was a special  
16 purpose vehicle that Barclays created for purposes of  
17 holding these loans and being the sponsor of the  
18 principal subprime securitizations. Menefee was the  
19 chief financial officer, and chief accounting officer of  
20 SABR. And Carroll also had a similar role in the  
21 entities that were created to facilitate the  
22 securitizations.

23 In the broader hierarchy of Barclays Capital,  
24 Inc., which was the principal underwriter of these 36  
25 deals, Menefee and Carroll were, you know, somewhere

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1 between midlevel management a bit higher than that but  
2 they were not certainly the CFO of Barclays Capital.

3           So it is our contention as I was saying that  
4 there was a fraudulent scheme that transpired from 2005  
5 to 2007 which as part of that fraudulent scheme involved  
6 the commission of multiple acts of mail fraud, wire  
7 fraud, bank fraud, in violations of 18 USC 1005 and 1014,  
8 in connection with the securitization of these 36 deals.

9           And that as a result of this fraudulent scheme,  
10 Barclays securitized in these 36 deals, tens of thousands  
11 of mortgage loans, whose characteristics it  
12 misrepresented to investors in the offering documents  
13 such as the prospective supplement and other types of  
14 communications and representations it made to investors  
15 where it systematically misrepresented the quality of the  
16 loans. It represented them as having been underwritten  
17 in accordance with underwriting guidelines and other  
18 standards aimed at insuring the defendants -- the  
19 borrowers' ability to pay when the defendants knew that,  
20 in fact, the borrowers have no such ability to pay or had  
21 less ability to pay than were being represented.

22           As of a result of these misrepresentations,  
23 these subject deals performed catastrophically. Over  
24 half of the mortgage loans securitized in these 36 deals  
25 defaulted and the investors in these deals incurred

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1 billions of dollars in losses on their investments.

2 So it is on the basis of those -- and I am  
3 summarizing, the complaint is long and quite detailed --

4 THE COURT: Yes, I've read it. Yeah.

5 MR. AMANAT: -- but it is the government's  
6 allegation on the basis of these misrepresentations and  
7 these other elements of the fraudulent scheme, Barclays  
8 and the two individual defendants violated the predicate  
9 offenses which subjects them to civil penalty liability  
10 under FIRREA.

11 In terms of the -- to answer your Honor's  
12 question about where the factual disputes lie, obviously  
13 from the perspective of the government, we have a very  
14 strong case. We've laid out in some detail in the  
15 complaint, the basis for our allegations and in fact,  
16 high level officials that Barclays, including the CEO of  
17 Barclays have essentially admitted to the press, that  
18 there were transgressions here on the part of Barclays  
19 that are appropriate targets for legal liability and, you  
20 know, according to the CEO in a statement he made about  
21 this case, it --

22 THE COURT: I can't help but notice, Mr.  
23 Amanat, that in purporting to tell me about the factual  
24 disputes, what you're telling me is all the ways that  
25 you're right.

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1 MR. AMANAT: Okay.

2 THE COURT: I was actually hoping you would  
3 tell me about the factual disputes.

4 MR. AMANAT: Okay. So obviously one of the  
5 biggest issues that the defendants have raised is whether  
6 we can actually demonstrate scienter on the part of the  
7 Barclays' officials. That's obviously -- whenever the  
8 government brings a fraud case, it needs to prove the  
9 requisite scienter.

10 We believe we can. They believe we cannot.  
11 It's been a topic of discussion between the parties, both  
12 during the investigative phase, there were some  
13 discussions that we had, as well as since the suit was  
14 brought.

15 There is -- the parties have also discussed a  
16 difference of opinion as to who may have been affected by  
17 Barclays fraud and how. Under the statute, at least with  
18 regard to the predicate offenses of mail fraud and wire  
19 fraud, in order to obtain civil penalties based on mail  
20 fraud and wire fraud, the government needs to show that  
21 the mail fraud and wire fraud affected a federally  
22 insured financial institution or what we call FIFI, F-I-  
23 F-I, in the vernacular.

24 And so the parties have a -- I guess you would  
25 describe it as both a philosophical dispute and a factual

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1 dispute over whether FIFIs were affected by the  
2 fraudulent scheme and if so, how. And that's one of the  
3 -- the legal aspects of that issue are part of what's  
4 currently pending before Judge Matsumoto on the  
5 defendants' motion to dismiss.

6           There are -- I mean those I think are the  
7 major --

8           THE COURT: Can I stop you there?

9           MR. AMANAT: -- issues.

10           THE COURT: Can I stop you there about the  
11 issues of --

12           MR. AMANAT: Sure.

13           THE COURT: -- the FIFIs and the financial  
14 institutions because I saw in your discovery plan that  
15 there's a dispute about that. Is there something that --  
16 as I read the discovery plan, that defendants are saying  
17 that you should have disclosed the identities of the  
18 FIFIs that you claim were affected by the alleged fraud.  
19 Have you identified them but just not disclosed them or  
20 is it a problem of identifying them? Is it a matter of  
21 completeness? What's the issue from your perspective?

22           MR. AMANAT: From our perspective, the issue is  
23 as follows, your Honor. The government's position is  
24 that FIFIs are affected by the defendants' fraud  
25 categorically in the following sense. In other words,

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1 we've identified numerous categories in the complaint of  
2 relationships, if you will, between third-party entities  
3 and Barclays and have alleged that any entity that falls  
4 within one of those categories is affected by the  
5 fraudulent scheme.

6           So for example, initial purchasers of the  
7 securities, secondary market purchasers of the  
8 securities, originators who participated in the --  
9 originators who sold loans to Barclays that were  
10 securitized in the deal, trustee of the securities,  
11 servicers. There's six, seven categories enumerated in  
12 the complaint that the government alleges any entity that  
13 as a matter of fact, fell into one of those categories  
14 with regard to one or more of the subject deals, was  
15 affected by the fraudulent scheme.

16           And of course if those entities happened to be  
17 a FIFI, then they're an affected FIFI and we've  
18 identified --

19           THE COURT: Have you identified who they are?

20           MR. AMANAT: In the complaint, we listed about  
21 a dozen of them and in our automatic disclosures --

22           THE COURT: Have you identified all of them?

23           MR. AMANAT: We have not identified all of  
24 them, your Honor, because the statute in the government's  
25 reading only requires that at least one FIFI be affected

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1 by a deal --

2 THE COURT: Sorry, I --

3 MR. AMANAT: -- in order for there to be a  
4 basis for the --

5 THE COURT: Sorry, may I?

6 MR. AMANAT: Yes, please.

7 THE COURT: I wasn't asking if you've  
8 identified them to the defendants.

9 MR. AMANAT: Oh, we have --

10 THE COURT: Apparently you have not --

11 MR. AMANAT: -- not identified --

12 THE COURT: Yes, have you internally identified  
13 all of the affected FIFIs?

14 MR. AMANAT: No, we have not, your Honor. We  
15 have identified affected -- we have identified at least  
16 one affected FIFI for each subject deal but there are ---

17 THE COURT: Have you disclosed to the  
18 defendants all that you've identified?

19 MR. AMANAT: Not yet, your Honor, no.

20 THE COURT: Why not?

21 MR. AMANAT: Well, they've propounded  
22 interrogatories to us. The answers aren't --

23 THE COURT: What's the secret?

24 MR. AMANAT: There's no secret, your Honor.

25 THE COURT: All right. So identify them.



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1 Look, you have to -- all of them would be victims, right?

2 MR. AMANAT: Not necessarily.

3 THE COURT: Oh, why not?

4 MR. AMANAT: Because --

5 THE COURT: Describe --

6 MR. AMANAT: -- the law --

7 THE COURT: Excuse me. Describe to me somebody  
8 who would be an affected FIFI but not directly and  
9 proximately harmed by the commission of the charged  
10 offenses.

11 MR. AMANAT: Sure. Well, the case law, your  
12 Honor, draws a distinction between affect and  
13 victimization. Victimization is a species of affect but  
14 not the only one. So, for example --

15 THE COURT: Mr. Amanat, you misunderstand my  
16 question. I am not asking about FIRREA, I am really not.

17 MR. AMANAT: Right.

18 THE COURT: There are going to -- because you  
19 have obligations under the Victims Rights Act --

20 MR. AMANAT: Right.

21 THE COURT: -- which I am sure you're diligent  
22 about fulfilling, you can't fulfill them unless you've  
23 identified those who fall into the category --

24 MR. AMANAT: Right.

25 THE COURT: -- of people or institutions who

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1 are directly and proximally harmed by the commission of  
2 the offenses described in the complaint.

3 You've identified some. There may be some that  
4 you haven't yet identified.

5 MR. AMANAT: Right.

6 THE COURT: But all of those that you've  
7 identified must be given notice. So word is out or will  
8 be. Is there any reason not to share the information  
9 with the defendants?

10 MR. AMANAT: Well, the information that we have  
11 as to who was victimized is information that we obtained  
12 from the defendants in the first instance. So they have  
13 the information. In terms of --

14 THE COURT: Mr Amanat? Mr. Amanat?

15 MR. AMANAT: Yes.

16 THE COURT: Any reason not to share? Look, you  
17 must under federal law, notify the victims.

18 MR. AMANAT: Right.

19 THE COURT: Every proceeding. Any reason not  
20 to tell the defendants here, the people we're providing  
21 notice to?

22 MR. AMANAT: No, your Honor. We just haven't  
23 compiled that --

24 THE COURT: Okay, so --

25 MR. AMANAT: -- full list yet.

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1 THE COURT: -- so do it. And I understand,  
2 look, the fact that it may not be complete yet after God  
3 knows how long you have been conducting this  
4 investigation and almost a decade after the offenses were  
5 completed -- the alleged offenses, I should say, I don't  
6 know why you wouldn't have this information but to the  
7 extent you're still compiling it, okay, you can  
8 supplement it.

9 But to the extent you have it, you have a pre-  
10 existing obligation to provide notice to those  
11 institutions and the people themselves, I don't see why  
12 you wouldn't just turn it over to the defendants but in  
13 any event, please do so.

14 MR. AMANAT: Okay, your Honor.

15 THE COURT: And as you identify others,  
16 supplement it.

17 MR. AMANAT: Very well, your Honor.

18 THE COURT: Okay. So I took you off on a  
19 tangent. You were starting to tell me about factual  
20 issues that you think are disputes. There's scienter.  
21 There's identifying who is affected. Anything else?

22 MR. AMANAT: They've also raised the personal  
23 jurisdiction issue as to three of the corporate entities  
24 that we named as defendants. They believe that there's  
25 no -- I don't know if that's a factual dispute or a legal

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1 dispute but it's in there. It's a bit of both, I guess.

2 THE COURT: Okay. Well, is there a factual  
3 dispute about where the institutions are or it's just a  
4 question of the legal import of how the jurisdictional  
5 laws affect them?

6 MR. AMANAT: I think there are elements of  
7 personal jurisdiction as to those three defendants that  
8 are factual.

9 THE COURT: Okay. Is this something that you  
10 think will be, as far as you're concerned, the subject of  
11 discovery?

12 MR. AMANAT: We've already propounded discovery  
13 requests to the defendants aimed at fleshing out the  
14 factual elements of that.

15 THE COURT: All right. Unless there's  
16 something else you think I need to know to get up to  
17 speed, I would like to turn over the floor to your  
18 colleagues. Anything else?

19 MR. AMANAT: Those are the key points, your  
20 Honor.

21 THE COURT: Okay. Who wants to speak for  
22 Barclays?

23 MR. KLAPPER: It's Richard Klapper of Sullivan  
24 & Cromwell.

25 THE COURT: Mr. Klapper, go ahead.

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1 MR. KLAPPER: Thank you, your Honor. Let me  
2 start with the last piece because in a way it's the  
3 easiest. There's only one defendant that we make a  
4 personal jurisdiction motion to dismiss. That's Barclays  
5 PLC. It's a bank holding company registered in the  
6 United Kingdom located in London.

7 THE COURT: And it does no business here in the  
8 United States?

9 MR. KLAPPER: It does. It only owns  
10 subsidiaries that do business. It does not directly do  
11 any business.

12 THE COURT: I see. Obviously the  
13 jurisdictional issue is not before me. So I am not going  
14 to wade into it but do you anticipate it's going to have  
15 any effect on the discovery process?

16 MR. KLAPPER: No.

17 THE COURT: Okay.

18 MR. KLAPPER: I mean unless they propound  
19 requests that go activities of the holding company in the  
20 United Kingdom that we don't think are proper. It's a  
21 pretty straightforward legal question.

22 THE COURT: But your jurisdictional position  
23 will not affect the basic proposition that Barclays PLC  
24 should be able to provide discovery in this case.

25 MR. KLAPPER: Yes.

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1 THE COURT: Okay. All right. So let's move  
2 on. From your perspective, what are the factual issues  
3 that are disputed here?

4 MR. KLAPPER: Well, let me just start and say  
5 as Mr. Amanat mentioned, there is a motion to dismiss  
6 pending before Judge Matsumoto which --

7 THE COURT: Yes. When I ask a question, it's  
8 usually a pretty good clue of what it is I want to know  
9 about.

10 MR. KLAPPER: Right.

11 THE COURT: I actually do know there's a motion  
12 to dismiss pending. Any chance I could get you to answer  
13 the question I asked?

14 MR. KLAPPER: Sure.

15 THE COURT: Okay. Wonderful.

16 MR. KLAPPER: The first disputed issue I  
17 believe your Honor has now resolved which is the question  
18 about the affected or victimized financial institutions  
19 because this is a FIRREA case. Either it's got to be a  
20 victimized financial institution under the Bank Fraud  
21 provision or it's got to be a --

22 THE COURT: Moving onto the factual issues that  
23 are in dispute, any chance I could get you to --

24 MR. KLAPPER: Sure.

25 THE COURT: -- describe those for me, please?

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1 MR. KLAPPER: Sure.

2 THE COURT: Thanks.

3 MR. KLAPPER: So scienter will definitely be an  
4 issue. There's been a two-year investigation. So from  
5 Barclays, the government has pretty much gotten most but  
6 not all of what it has asked for and I think we're on our  
7 way towards resolving some of the other issues. There  
8 may be issues as to audiotapes, just because they're so  
9 difficult to listen to and go through.

10 THE COURT: When you say there may be issues,  
11 meaning discoverability or what they say?

12 MR. KLAPPER: Burden. Burden. It's -- they've  
13 received a lot of them --

14 THE COURT: Uh-hum.

15 MR. KLAPPER: -- during the course of the  
16 investigation. They've requested more. We've had  
17 discussions. There's no ripe dispute but to the extent  
18 that the number of hours that have to be listened to in  
19 order to determine what's responsive to their requests is  
20 too large, that may be a dispute with respect to  
21 Barclays.

22 THE COURT: I am honestly -- perhaps I  
23 shouldn't be but I am surprised to hear that there's  
24 going to be any objection to something that will take too  
25 long, given the extraordinarily lengthy discovery period

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1 you've all proposed but --

2 MR. KLAPPER: Yes, and --

3 THE COURT: -- maybe you'll persuade me. Okay.

4 MR. KLAPPER: Now the likely discovery disputes  
5 are ones that come out of third-party requests.

6 THE COURT: Uh-hum.

7 MR. KLAPPER: So one of the reasons, probably  
8 the sole reason for the length of the discovery period is  
9 the government's case depends upon the description of  
10 loans in the offering documents. That requires looking  
11 at loan files. The government has apparently taken the  
12 view that they can look at servicer files. That is the  
13 companies that service the loan after it's been made to a  
14 borrower.

15 Our position is or at least we reserved the  
16 position to take a look at those files and make sure that  
17 they're adequate because the files of the originators,  
18 those people who made the loans, tend to be more  
19 expansive, contain more documents and are more relevant  
20 to the question what did the person who made the loan  
21 know about the borrower.

22 THE COURT: I am missing something. Are you  
23 saying that because there may be a different set of  
24 documents that will have more information --

25 MR. KLAPPER: Correct.



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1 THE COURT: -- there should be some limit on  
2 looking at another set of documents that may have less  
3 information?

4 MR. KLAPPER: No. What it means is that while  
5 we have produced to the government a large number of  
6 servicer files, we will have to go out to the people like  
7 Countrywide and some defunct entities like IndyMac and  
8 request loan files. Those entities in other cases have  
9 at times objected to requests, at times they haven't.  
10 We'll just have to see. And it is a large number of loan  
11 files. There are in these 36 deals, a huge number of  
12 loan files.

13 THE COURT: Can you give me the order of  
14 magnitude?

15 MR. AMANAT: 154,000 loans.

16 THE COURT: Okay.

17 MR. KLAPPER: They are -- the government is  
18 proceeding by sampling. We reserve the right to contest  
19 that but that's how they're proceeding and between  
20 sampling and looking at one category, one additional  
21 category of loans, I believe they're up above 7,000 loans  
22 that they propose to look at.

23 THE COURT: When you say you reserve the right,  
24 I didn't hear the rest of the sentence. You reserve the  
25 right to do what now?

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1 MR. KLAPPER: To contest the legitimacy of  
2 taking the results from the sample and extrapolating it  
3 to the whole.

4 THE COURT: That's going to be an issue, an  
5 evidentiary issue.

6 MR. KLAPPER: Correct.

7 THE COURT: Okay. Not a discovery issue.  
8 Okay.

9 MR. KLAPPER: But the government is looking at,  
10 we believe approximately 7,000 loans.

11 THE COURT: And of course you're free in  
12 advance of teeing up the evidentiary issue, I want to  
13 make sure that no one is precluded from making an  
14 argument before Judge Matsumoto based on some limitation  
15 in discovery.

16 So obviously if you think that your ability to  
17 defend against the claims will rely on a review of the  
18 entire 154,000, if you think that's appropriate  
19 discovery, you'll make that request and do it but  
20 obviously you won't say they can't rely on sampling if  
21 you're not willing to make the attempt to look at all of  
22 the loans, right?

23 MR. KLAPPER: Right.

24 THE COURT: Okay. And our schedule that we've  
25 agreed with the government on provides that we will have

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1 the right to designate those loans that we want to look  
2 at in addition to the ones the government has proposed.

3 THE COURT: There's sampling on both sides, as  
4 opposed to just on one side.

5 MR. KLAPPER: Right, sampling or targeted  
6 looking at --

7 THE COURT: Yes.

8 MR. KLAPPER: -- particular things.

9 THE COURT: Right.

10 MR. KLAPPER: So one of the disputes may be  
11 with third-parties from whom we need to get this  
12 information.

13 THE COURT: Okay.

14 MR. KLAPPER: I don't know whether we're going  
15 to have a dispute with the government over their  
16 production of documents that they have collected in their  
17 investigation. We've had discussions with them.  
18 Hopefully we'll be able to reach an agreement but they  
19 have relied upon work that other United States Attorney's  
20 Offices have done in investigating other entities and I  
21 think where we've landed on this which may or may not be  
22 something that's adequate is that they apparently have  
23 files that relate to their investigation which include  
24 documents that they obtained from other offices and  
25 that's certainly is information, to the extent not

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1 privileged, that we would want them to produce. I  
2 believe they're willing to produce that and are in the  
3 process of doing that.

4           There may come a time where we want information  
5 from the government that it's collected in other offices  
6 who have investigated, let's say, rating agencies or if  
7 they've investigated the originators that we may need.  
8 That's not a current dispute but it may come up.

9           THE COURT: Okay.

10           MR. KLAPPER: There's also the issue, speaking  
11 of rating agencies, of the third-parties like rating  
12 agencies and whether or not they will be willing to  
13 provide us with the information that we'll seek from  
14 them. We're --

15           THE COURT: From the rating agencies.

16           MR. KLAPPER: From the rating agencies. One of  
17 the reasons we can't be that clear about what we may want  
18 is we haven't yet seen the total of what the government  
19 has obtained.

20           THE COURT: Uh-hum.

21           MR. KLAPPER: So if the government has obtained  
22 what we think is adequate, then we don't have to redo  
23 their work but if we don't think it's adequate and we  
24 need additional information from the rating agencies, we  
25 may have to go to that.

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1           These cases, your Honor, although this is a  
2 fraud case, which makes it different from a lot of the  
3 residential mortgage-backed securities cases, many of  
4 which were more or less strict liability cases under the  
5 securities laws, but fundamentally a lot of what we have  
6 to do in this case is similar to other cases and there  
7 have not been a huge number of disputes. There have been  
8 issues about borrower personal identification information  
9 and the like, which had been worked out and we've been  
10 working with the government on that issue and, in fact,  
11 that's an issue in our proposed protective order that we  
12 submitted yesterday.

13           But these have not been litigations that have  
14 had a huge amount of discovery dispute. It's a huge  
15 amount of work, a huge amount of documents but not a huge  
16 amount of disputes.

17           THE COURT: Sounds like you're all going to be  
18 working hard except me.

19           MR. KLAPPER: Right.

20           MR. AMANAT: I --

21           MR. KLAPPER: Oh, I should mention --

22           THE COURT: Which is fine with me.

23           MR. KLAPPER: -- that we have had discussions  
24 about interview memos that the government has taken,  
25 that's not ripe to be able to say we're going to be

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1 unable to resolve it but it is an open issue as to our  
2 ability to obtain those.

3 THE COURT: Okay. All right. Thank you.

4 Let me turn next to Ms. James. You're  
5 representing Mr. Menefee?

6 MS. JAMES: Yes, your Honor.

7 THE COURT: From your perspective, you know, I  
8 know in a case like this the cases -- the claims against  
9 the individuals can be sort of the tail and get  
10 overlooked but I want to make sure I am not overlooking  
11 anything.

12 Anything unique to your client that you think  
13 hasn't been raised that I should know about to get up  
14 third-party speed?

15 MS. JAMES: I appreciate the opportunity, your  
16 Honor. I just want to make clear, I think it was  
17 implicit in what Mr. Klapper said that in addition to  
18 challenging scienter, I believe all defendants are going  
19 to be challenging the falsity and materiality of some of  
20 the government's alleged misrepresentations.

21 But with respect to Mr. Klapper's description  
22 of the potential discovery disputes on behalf of Mr.  
23 Menefee, I don't at this juncture, see anything  
24 different.

25 THE COURT: Well actually this is the first I'm

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1 hearing that falsity, for example, is going to be  
2 contested. So the representations about the extent to  
3 which the loans had been -- the due diligence had been  
4 done, et cetera, you're saying that those representations  
5 were not false.

6 MS. JAMES: Correct, your Honor. I believe it's  
7 the position of all of the defendants that many of the  
8 statements and the offering documents that the government  
9 is challenging were incorrect, were in fact accurate and  
10 that is the reason that the parties are going to engage  
11 in a reunderwriting exercise of the loans to resolve that  
12 disputed fact.

13 THE COURT: With respect to your client, I know  
14 that the complaint attributes to your client specific  
15 statements often in quotation marks, are those in  
16 dispute?

17 MS. JAMES: I think the government has quoted  
18 selective portions of certain statements made by my  
19 client. I think what they mean and whether they were  
20 false or material in any respect is quite certainly going  
21 to be in dispute as --

22 THE COURT: So the truth --

23 MS. JAMES: -- is --

24 THE COURT: -- the veracity of quoted  
25 statements will be an issue.

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1 MS. JAMES: Correct, some of them, yes.

2 THE COURT: But not the words that appear  
3 between the quotation marks?

4 MS. JAMES: The words that appear between the  
5 quotation marks were derived from a document or  
6 recording. So those words do exist but we do have a  
7 dispute over what they mean.

8 THE COURT: They don't mean what they appear to  
9 mean.

10 MS. JAMES: That's correct, your Honor.

11 THE COURT: Okay. All right.

12 MS. JAMES: And I think also there will be a  
13 factual dispute about what precisely his role was in  
14 reviewing certain of the loan pools, underlying certain  
15 of the securitizations. I think the government -- as the  
16 complaint reads, there's a suggestion that he had his  
17 hands in absolutely everything and I think that goes to  
18 the scienter point --

19 THE COURT: Okay.

20 MS. JAMES: -- but I am not sure that that will  
21 prove to be correct.

22 THE COURT: And one other thing that I raise --  
23 I always raise in circumstances where there's an  
24 allegation of criminal conduct and individual defendants  
25 in a civil case, I don't mean to suggest anything other



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1 than that it's a potential issue and I recognize that  
2 given the timing it's less likely but is there any -- do  
3 you have any anticipation that Fifth Amendment concerns  
4 or anything else is going to affect discovery in this  
5 case?

6 MS. JAMES: Not at this time, your Honor, no.

7 THE COURT: All right. From your perspective,  
8 anything else I should know to get up to speed?

9 MS. JAMES: No, your Honor.

10 THE COURT: Let me ask you --

11 MS. JAMES: Thank you.

12 THE COURT: -- to turn it over to Mr. McGorty.  
13 Same kinds of questions for you, Mr. McGorty about your  
14 clients.

15 MR. MCGORTY: And, your Honor, the same kinds  
16 of answers. You know, we would join with the bank's  
17 analysis of the potential factual disputes. With respect  
18 to Mr. Carroll, you know, it's difficult to sort of  
19 identify factual -- specific factual disputes  
20 because there are so few specific facts alleged against  
21 Mr. Carroll in the complaint despite it's length.

22 We do believe that materiality is an issue. We  
23 do believe that the falsity of some of the statements,  
24 not -- and there are very few statements about Mr.  
25 Carroll and from Mr. Carroll in the complaint but we're

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1 not disputing the words but perhaps their meaning in the  
2 actual case.

3 THE COURT: Okay.

4 MR. MCGORTY: So we would just join with the  
5 arguments that have been raised.

6 THE COURT: And same question about Fifth  
7 Amendment or related concerns, anything that you think  
8 will affect discovery?

9 MR. MCGORTY: No, we do not, your Honor.

10 THE COURT: Okay. All right.

11 MR. KLAPPER: Your Honor, if I could just ask  
12 one --

13 THE COURT: Yes, Mr. Klapper?

14 MR. KLAPPER: -- additional point which both  
15 the individuals and Barclays has and that is Mr. Amanat  
16 has mentioned a singular scheme across all the deals.

17 THE COURT: Uh-hum.

18 MR. KLAPPER: These individuals, Mr. Menefee  
19 and Mr. Carroll were not involved in many of the deals  
20 and there will be a dispute as to how they could possibly  
21 be part of a scheme that involved those deals. As  
22 Barclays defendants, there will be very much a dispute as  
23 to the existence of any kind of scheme but certainly not  
24 a scheme that crosses over subprime deals, deals that are  
25 not subprime deals and deals where Barclays was solely

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1 the underwriter and not the issuer of the securities.

2 So these issues are teed up in front of Judge  
3 Matsumoto but they will be an issue continuing through  
4 the case.

5 THE COURT: I want to discuss with you the  
6 discovery plan that you've submitted and look, let me  
7 say, I get it that this is not a typical case, you know  
8 -- I've got some lawyers waiting on the next case that is  
9 more routine, so you know I didn't come in here expecting  
10 that you get all the discovery done in six months.

11 That said, this is a really extraordinary  
12 amount of time that you've planned out for a case of  
13 exceptional importance to the public and I'm sure there  
14 are a lot of people who quite understandably want to see  
15 this resolved sooner rather than later. I'm not going to  
16 press you at the moment on your very long period for fact  
17 discovery deadline -- in the fact discovery deadline. I  
18 get it. You've got a lot of sources of information to  
19 get to and a lot of documents to collate but I want you  
20 guys to be clear, I don't -- with a fact discovery period  
21 of 14 months, I really don't anticipate being terribly  
22 receptive to a request to extend it.

23 So please go forward with the expectation that  
24 that's going to be a firm deadline. I did want to  
25 discuss the proposal to have expert discovery extend for

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1 more than nine months after the close of fact discovery.  
2 I take it there's a fair amount of expert work that yo  
3 could be started on while you're doing fact discovery,  
4 even if that's not the case, I'm quite honestly skeptical  
5 about the need to take nine months after the completion  
6 of fact discovery to exchange your expert reports. Does  
7 anybody want to tell me what you have in mind that's  
8 going to take that long?

9 MR. KLAPPER: Let me address that, your Honor.  
10 Now first off, the analogous cases, the only one that's  
11 gone to trial was the FHFA's case against Nomura in the  
12 Southern District before Judge Cote. that case was filed  
13 in September of 2011 and went to trial in March of 2015,  
14 so three and a half years later.

15 The case against Royal Bank of Scotland, a  
16 similar case, a very large case, as Nomura was not that  
17 large a case, smaller than this case, but RBS' case still  
18 has not gotten to trial. It was also filed in September  
19 of 2011, so that's --

20 THE COURT: It seems to me the sort of thing  
21 that we ought to be aiming not to replicate.

22 MR. KLAPPER: I agree, your Honor. So then  
23 what are the reasons why these take so long? It's the  
24 loan file reunderwriting process. Getting the loans,  
25 reunderwriting the loans.

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1           THE COURT: I'm not talking -- Mr. Klapper, we  
2 seem to have this come up multiple times in such a short  
3 period. I ask a different question and I'm hoping you'll  
4 answer the one I ask. I am not asking about fact  
5 discovery. I said I am going to give you the period that  
6 you've asked for on that but expert discovery -- you  
7 haven't walked me through the kinds of expertise you  
8 anticipate bringing to bare.

9           I imagine at least some of them could get --  
10 some of your experts can get started before the full  
11 completion of fact discovery and even if some of them  
12 have to wait for all discovery, all of the fact discovery  
13 to be completed, I don't understand why it is going to  
14 take nine months for them to complete and exchange their  
15 reports.

16           MR. KLAPPER: The primary experts are those who  
17 reunderwrite loan files. So the testimony on the  
18 reunderwriting of the loan files on both sides will be by  
19 expert testimony. That will begin as soon as we get the  
20 loan files and will continue as we continue to get loan  
21 files.

22           Once the affirmative reunderwriting expert  
23 reports are issued, the experts on both sides for  
24 reunderwriting, as well as experts on appraisals  
25 because it tends to be -- appraisal valuations tends to

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1 be an important issue, will be responding to those  
2 reports and that takes a great deal of time.

3 Other experts such as --

4 THE COURT: Well, walk me through that. Why  
5 does it take a great deal of time?

6 MR. KLAPPER: Because you have to go and look  
7 at the loan by loan analysis of the expert and go through  
8 the files and see whether or not you agree with it or not  
9 and that's a loan by loan process. I mentioned 7,000  
10 loans, it appears to be what the plaintiffs are planning  
11 to do. We may very well have a number of other  
12 additional loans that will add to that. That takes a  
13 great deal of time.

14 Other experts such as people who will determine  
15 what the effect of any alleged misrepresented feature of  
16 the borrower or the loan need to have the results of that  
17 work in order to determine whether or not it made a  
18 difference.

19 So for example, if the loan to value according  
20 to the plaintiff's expert, was really 105 percent, so the  
21 loan was 105 percent of the value according to their  
22 valuation, were loans that they've identified as having  
23 those features, did they perform in any material way  
24 better or worse than loans that they don't contend are  
25 misrepresented? They have to wait to see the results of

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1 that in order to begin their work.

2 THE COURT: See the results of what?

3 MR. KLAPPER: The plaintiffs were -- in the  
4 plaintiff's case, the defendants reunderwriting experts  
5 conclusions as to which of the loans were misrepresented.

6 THE COURT: This strikes me as one where as you  
7 go along in discovery, your experts can get a great deal  
8 of their work done because yes, there's obviously on each  
9 side, a need to respond to the opinion of the opposing  
10 expert which you won't get until you get it.

11 But even before that, your folks are going to  
12 be able as you get the loan information, loan by loan, to  
13 start working up what you think of the loan, what you  
14 think of the materiality of the representations, right?  
15 Because you'll have the facts and I take it -- if I am  
16 incorrect about this assumption, I'll ask you to relook  
17 at yours, I take it that you're not going to wait until  
18 August 14th, 2018, when fact discovery is done to turn  
19 all of this stuff over to your experts and start having  
20 to look at loan by loan analysis.

21 MR. KLAPPER: Experts on both sides will be  
22 looking at the loan files as we obtain the loan files.

23 THE COURT: Okay. So well before the start of  
24 the expert discovery period, your experts are going to be  
25 doing their work, and are going to have a great deal

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1 going on.

2 MR. KLAPPER: Right. And then there is a  
3 deadline for the affirmative expert reports. So all  
4 affirmative expert reports.

5 THE COURT: Right.

6 MR. KLAPPER: Reunderwriting or any other  
7 affirmative expert report comes after the end of  
8 discovery to give a little bit of time for them to take  
9 into account anything that was obtained at the end of  
10 fact discovery.

11 THE COURT: Uh-hum.

12 MR. KLAPPER: Then there are the rebuttal  
13 expert reports because you can't really start on the  
14 rebuttal work -- you can review the loan files and we  
15 will on both sides, I am sure, be reviewing the loan  
16 files but you can't respond to the conclusions of the  
17 experts whether they be valuation experts because they  
18 will also be experts who purport to have automated  
19 valuation algorithms where they're going to say okay,  
20 this is the real value of the loan according to my black  
21 box and then there will be people on the other side  
22 criticizing that. You won't know the results of that  
23 either until you get the affirmative reports.

24 THE COURT: I get that but, you know, if the  
25 experts already have their views about what the opinions



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1 should be, and then they see the opposing expert who has  
2 a disagreeing view, they're already well on their way to  
3 being able to explain why that expert is wrong because  
4 they've already done their analysis.

5 Sure, you have to take into account the  
6 methodology of the opposing expert and explain why you  
7 disagree or if you still disagree after seeing the  
8 report, I get that. But you've set aside six months, at  
9 least, if I am not mistaken, or is it more for rebuttal  
10 opinions. It seems like an extraordinarily long time.

11 MR. KLAPPER: It's a long time because there  
12 are a lot of loans. These cases are, as much as the  
13 government makes very broad assertions, these cases are  
14 -- involve individual loans and even on a sampling method  
15 there are going to be more than 7,000 and probably a lot  
16 more than that, given what we're going to do as well,  
17 loans and they take a while.

18 THE COURT: All right. Well, look, largely  
19 because I defer to the fact that you all have a lot more  
20 expertise in the issues in this case than I possibly can  
21 at this point, I'm going to defer to your proposal but I  
22 am looking at this as something that already has baked  
23 into it the one or two or three requests for extensions  
24 that I often see in civil cases and I am going to treat  
25 it that way.

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1           So please understand that if you're going to  
2 ask for more time at any point, you're going to need to  
3 give a very compelling reason and a very detailed  
4 explanation of what you've done up to that point to  
5 comply with the proposal that I'm sure you've all put a  
6 lot of thought into to propose something that you can  
7 live with. I expect you do that because this is, you  
8 know, for events that had such an important effect on the  
9 national and global economy a decade ago, for us not to  
10 be in a position to complete discovery until the end of  
11 May 2019, is extraordinary.

12           I am not in a position to be able to tell you  
13 that it's unwarranted but I am in a position to tell you  
14 that having committed to it on all your parts, I am going  
15 to expect you to live up to it. All right.

16           I did want to address the issue of amending the  
17 complaint. I think to some extent and I'm having some  
18 trouble finding it now in your proposal, to some extent  
19 you've left that open-ended, have you not?

20           MR. AMANAT: We have, your Honor.

21           THE COURT: Yes, let's not do that. I'm happy  
22 to have you guys go back to the drawing board and come up  
23 with a proposal but, you know, Mr. Amanat, the government  
24 has been looking into this for how long? Almost a  
25 decade?

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1 MR. AMANAT: No. Well, our investigation of  
2 Barclays began in early 2014.

3 THE COURT: The government has been looking  
4 into what's been going on in this industry and --

5 MR. AMANAT: Yes. Since --

6 THE COURT: -- this practice --

7 MR. AMANAT: -- a couple of years before that.  
8 That's correct, yes.

9 THE COURT: So I assume you know what your  
10 pleading needs to look like.

11 MR. AMANAT: Absolutely.

12 THE COURT: I assume you'll have a better  
13 understanding after you've had the responses to your  
14 initial document demands and interrogatories.

15 MR. AMANAT: Right.

16 THE COURT: I don't intend to leave this open-  
17 ended so that sometime in 2019 you're adding new  
18 allegations that require a new round of discovery.

19 MR. AMANAT: Yes, we don't have any intention  
20 to do that. We certainly are not planning on adding any  
21 additional defendants or any additional deals for  
22 example.

23 THE COURT: Right. And there's one other thing  
24 I wanted to add to that which is you put in your plan  
25 that well, we'll do it in accord with the Federal Rules

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1 of Civil Procedure. Absolutely. But it's not going to  
2 be just Rule 15.

3 We're going to have a deadline, a presumptive  
4 deadline so that any proposed amendment after that  
5 deadline also has to satisfy the good cause standard  
6 under Rule 16. And to me, what makes the most sense is  
7 sometime a couple of months after you receive responses  
8 to the initial round of discovery demands, any reason  
9 anybody can think of not to make that the presumptive  
10 deadline?

11 MR. AMANAT: In an earlier draft of this  
12 document that the parties were discussing, the parties  
13 had initially thought to put that deadline at the end of  
14 November of this year --

15 THE COURT: Uh-hum.

16 MR. AMANAT: -- it was -- the reason we ended  
17 up leaving it open-ended, it was then pointed out that we  
18 were not likely to receive a decision on the defendants'  
19 motion to dismiss until after that date. And so the  
20 parties ended up deleting the language about the deadline  
21 for amending the complaint being the end of November in  
22 favor of language that allowed the parties to kind of  
23 revisit that issue once we get a decision from the judge  
24 on the motion to dismiss.

25 But, you know, from the government's point of

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1 view, we don't anticipate on our end adding any  
2 additional parties or claims. The only amendment that  
3 the government is likely to make to the complaint will  
4 either be an amendment to reform the complaint if need be  
5 in response to a decision on the motion to dismiss --

6 THE COURT: Right.

7 MR. AMANAT: -- or alternatively, you know, I  
8 guess the possibility of, you know, conforming the  
9 complaint to the evidence that emerges in discovery as is  
10 sometimes (indiscernible).

11 THE COURT: And both of those clearly fall  
12 within the good cause standard of Rule 16.

13 MR. AMANAT: Sure. The --

14 THE COURT: So what I am really looking for is  
15 something that puts a deadline on when you have to amend  
16 your pleadings to conform to what you've learned in  
17 discovery up to that point, understanding that most of  
18 what we've done, I am happy to adopt that end of November  
19 deadline --

20 MR. AMANAT: The government has no objection.  
21 The one issue that the parties discussed in regards to  
22 this topic that could conceivably affect discovery is the  
23 possibly that the defendants who of course haven't  
24 answered yet because their answer is not due since they  
25 moved to dismiss instead --

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1 THE COURT: Uh-hum.

2 MR. AMANAT: -- may at some point in time  
3 decide to bring in additional parties for their purposes.  
4 And they haven't ruled out --

5 THE COURT: Any --

6 MR. AMANAT: -- the possibility of wanting to  
7 do that.

8 THE COURT: Anyone going to do that?

9 MR. KLAPPER: No.

10 THE COURT: You folks?

11 MS. JAMES: No, your Honor.

12 MR. MCGORTY: No, your Honor.

13 THE COURT: Okay.

14 MR. AMANAT: So --

15 THE COURT: So but I do think in lieu of an  
16 answer and I understand that you filed a motion to  
17 dismiss, to shape everybody's expectations in discovery  
18 and allow you all to meet the discovery deadline, whether  
19 you label it answer or something else, I don't  
20 particularly care, I think it would be useful to have a  
21 document from each defendant that or each group of  
22 defendants that does what an answer would do saying, you  
23 know, this one is admitted, this one is denied, this one  
24 we don't have information, so that the parties can shape  
25 their discovery requests accordingly. And I am going to

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1 ask you to do that within 30 days. Okay?

2 MR. KLAPPER: Yes, your Honor.

3 THE COURT: Okay. All right. Only because  
4 hope spring's eternal but not because I have any  
5 expectation of a positive result, settlement? You must  
6 have discussed it up until now or you wouldn't be here.

7 MR. AMANAT: Yes, your Honor. Prior to filing  
8 suit, the parties actually engaged in about seven months  
9 of --

10 THE COURT: I'm sure, yes.

11 MR. AMANAT: -- settlement discussions  
12 intermittently over that time but obviously more  
13 intensely towards the latter part of that period. And  
14 those discussions did reach the highest levels of both  
15 the government and Barclays and ultimately proved not  
16 fruitful which is how we ended up here.

17 As we previously communicated to the  
18 defendants, the government continues to stand ready to  
19 discuss settlement with them at any time and does  
20 perceive settlement to be a -- certainly a viable and  
21 preferable way to achieve resolution of this case on a  
22 time frame that's sooner than what is anticipated by the  
23 discovery plan.

24 But the ball is really in the defendants' court  
25 and until we hear from them that they are interested in

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1 resuming settlement discussions with us, we're obviously  
2 proceeding with discovery and certainly are hopeful that  
3 in the course of discovery the issues will be framed, the  
4 parties positions will develop to a point where  
5 eventually the parties can resume settlement discussions  
6 again at some point, that the defendants consider  
7 opportune.

8 MR. KLAPPER: As Mr. Amanat said, there were a  
9 lot of discussions, exchange of views and the like, and  
10 the government decided to file this lawsuit. We're  
11 always willing to talk to the government but at this  
12 point, we think that the better way to reach a resolution  
13 is to go forward with the lawsuit, the motion to dismiss  
14 the discovery that we are obtaining from the government  
15 and there may come a time down the road where it will  
16 make sense for both sides to talk but I don't think it's  
17 quite the right time.

18 THE COURT: Okay, look, a lot of cases more  
19 routine than this, I would say guys, you need to just get  
20 to the table. I know you've been there and I'm not going  
21 to add anything to that discussion that you haven't  
22 thought of yourselves but keep your eyes open for an  
23 opportunity and please let me know if there's anything  
24 that can happen on my side, whether it's some sort of  
25 court-sponsored settlement conference or mediation,



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1 anything that I can do to facilitate getting you guys  
2 back to the table, let me know but I am going to assume  
3 that I will hear from you and I won't press you on it.  
4 I'm always going to ask.

5 Is there anything else that anyone thinks we  
6 should take up today that we haven't already discussed?

7 MR. AMANAT: No, your Honor, we did -- the  
8 parties did jointly file a proposed protective order  
9 yesterday.

10 THE COURT: Yes, I haven't taken a look at it  
11 yet.

12 MR. AMANAT: Yes.

13 THE COURT: I'll --

14 MR. AMANAT: It's long. I am sure it will --

15 THE COURT: I will take a look at it and let  
16 you know if I have any concerns about it. I'll enter the  
17 schedule as we've discussed. Just to recap the things  
18 that I have in my notes of sort of our take-away, the  
19 government is going to provide a victim notice going  
20 forward and going to disclose the effective FIFIs and  
21 financial institutions that you've identified thus far to  
22 the defendants.

23 We'll set into the schedule that you've  
24 proposed a presumptive amendment deadline of November  
25 30th of this year. Defendants are going to provide some

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1 document response to the allegations in the complaint in  
2 the way an answer would, thirty days from today. I think  
3 that's it.

4 Anything else?

5 MR. KLAPPER: Does your Honor wish that we  
6 submit a revised plan that takes these issues into  
7 account?

8 THE COURT: No, I have my own standard format  
9 for an order. I will have it out.

10 MR. KLAPPER: Okay, thanks.

11 THE COURT: All right. Thank you all.

12 MR. AMANAT: Can I --

13 THE COURT: Oh, yes, Mr. Amanat?

14 MR. AMANAT: Can I just have one moment, your  
15 Honor, to confer with my colleagues?

16 THE COURT: Sure.

17 (Counsel and client confer)

18 MR. AMANAT: Okay, yes, that's it, your Honor.  
19 Thank you.

20 THE COURT: Okay. Thank you all. Have a very  
21 good day.

22 MR. KLAPPER: Thank you, your Honor.

23 MS. JAMES: Thank you, Judge.

24 (Matter concluded)

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C E R T I F I C A T E

I, LINDA FERRARA, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this 9th day of June, 2017.

  
Linda Ferrara

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